IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

ARBITRATION PETITION NO. 01 OF 2006

Mrs. Suniti Dilip Odhekar .. Petitioner

Vs.

Maharashtra Jeevan
Pradhikaran through its
Member Secretary and ors. .. Respondents

Mr. Shriram S. Kulkarni for Petitioner.
Ms. Neeta P. Karnik for Respondent No.1.

CORAM : B. H. MARLAPALLE,J.

Date : February 03, 2006.

P.C.:

1. Heard Mr. Kulkarni, the learned counsel for the petitioner. The respondent nos.1 and 2 have filed reply and opposed this application under Section 11 of the Arbitration and Conciliation Act, 1996.

2. Admittedly, when the contract was signed between the parties, the petitioner was provided with contract agreement in B-1 form and the terms of reference as well as general conditions of contract. Clause 11 of the terms of reference for consultancy service reads as under:-

> "11. In case any dispute in enforcement of this agreement, the Chief Engineer, Maharashtra or any other officer assigned for

> the same by the Maharashtra Jeevan Pradhikaran will be the arbitrator."

3. It has been pointed out in the reply filed that the petitioner invoked Clause 11 and approached the Officer assigned by the respondent no.1 for enforcement of the terms of agreement and the said Officer acted as the Arbitrator i.e. the Chief Engineer. The Chief Engineer of the respondent no.1, after hearing the petitioner, allowed the extra claim of Rs.1,46,121/- and the payment was made by cheque dated 4/6/2003.

4. Under the general rules and conditions of contract, Clause 30.3 reads as under:-

> "30.3 If the Contractor is not satisfied with then order passed by the Chief Engineer as aforesaid, the Contractor, may within thirty days of receipt by him of any such order appeal against it of the Member Secretary, Maharashtra Water Supply and Sewerage Pradhikaran, who, if convinced that prima-facie the Contractor's claim rejected by Superintending Engineer/Chief Engineer is not frivolous and that there is some substance in the claim of the contractor as good merit a detailed examination and decision by the Pradhikaran shall put up to the Pradhikaran for suitable decision."

5. It is pointed out by the respondents in the reply that petitioner invoked even this remedy of appeal under Clause 30.3 by submitting such an appeal to the Member Secretary who, in turn, after hearing the parties, approved the claim of the petitioner at Rs.1,68,621/-. The Appellate Authority thus enhanced the claim by Rs.46,121/- over and above the claim allowed by the Chief Engineer as an Arbitrator. It is pointed out that the amount to be paid to the petitioner by way of balance is Rs.1,22,500/- and he has been called upon to collect the same. Thus, the departmental remedy as available under the contractual terms has been fully exhausted by the petitioner and if the petitioner is still not satisfied, the remedy of filing a recovery suit is obviously not barred more specifically when the respondents themselves have taken a stand that there is no provision for further arbitration under the Act, as per the contractual terms between the parties.

6. The application is, therefore, rejected summarily and it is clarified that this order will not come in the way of the petitioner to approach the Civil Court.

(B.H. Marlapalle, J.)